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**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Ex Parte Presentation, MM Docket No. 92-266,  
Implementation of Sections of the Cable Television  
Consumer Protection and Competition Act of 1992 --  
Rate Regulation

Dear Mr. Caton:

This letter is submitted on behalf of ValueVision International, Inc. ("ValueVision") pursuant to Section 1.1206(a) of the Commission's rules. Robert L. Johander, Nicholas M. Jaksich, and Michael Jones, of ValueVision, and William R. Richardson, Jr. and Christopher M. Heimann, attorneys for ValueVision, today met with Maureen A. O'Connell, John C. Hollar, and Byron F. Marchant to discuss the petition for reconsideration filed by ValueVision in the above referenced proceeding, and recent actions taken by various cable systems in response to ValueVision's requests for leased access. ValueVision also provided copies of the attached written presentation.

If there are any questions with respect to this matter, please communicate directly with the undersigned.

Respectfully,

  
Christopher M. Heimann

Attachment

cc: Maureen A. O'Connell  
John C. Hollar  
Byron F. Marchant

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**VALUEVISION INTERNATIONAL, INC.**

**OCT 27 1993**

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1. ***Background***

- ValueVision is a television home shopping network formed by former CVN employees, which began operation in October 1991.
- ValueVision broadcasts its programming on seven low power television stations, on a part-time basis on several full-power UHF stations, and to home satellite dish owners.
- It has recently entered into contracts to acquire three additional full-power stations.
- Since 1992, it has also distributed its programming by leased access, primarily on a part-time basis, on 48 cable systems in 46 cities to an aggregate of nearly 4.7 million cable subscribers.

2. ***ValueVision is the Only Existing Competitor to QVC/HSN***

- QVC and HSN have over 46.3 million cable subscribers and 38 million cable and satellite subscribers respectively, and have now proposed to merge.
- HSN is controlled by Liberty, which holds 69% of the voting power of HSN. TCI recently agreed to repurchase Liberty.
- Liberty also shares almost 50% of the voting power of QVC with Comcast and Barry Diller.
- Several other large MSOs also have substantial interests in QVC. Time Warner owns 10.3% of QVC's common stock. Cox and Newhouse have recently each agreed to purchase \$500 million of newly issued QVC securities to assist in QVC's bid to acquire Paramount.

3. ***Delay in Clarifying the Leased Access Rules is Impeding Competitive Access***

- To compete with QVC and HSN on a nationwide basis, ValueVision must reach cable subscribers through leased access. But since the release of the leased access regulations, it has been stymied by disputes with cable operators over the proper application of the rules to home shopping.

- Prior to the Commission's adoption of the implicit fee construct, ValueVision negotiated leased access agreements with TCI and others at rates averaging \$.08/sub./month (assuming 24 hour carriage, 7 days per week).
- Following the adoption of the leased access rules, TCI has demanded \$.52/sub/month for the lease of a channel on a full-time basis on its Vacaville, CA system (or \$ 127,732.80 annually), and \$.90/sub/month for its Boise, Idaho system (or \$ 458,298.00 annually). Cox has demanded \$.58/sub/month for its Bakersfield, CA system (or \$ 153,120 annually).
- These prohibitive rates are 6-11 times above the average rate currently charged ValueVision in agreements negotiated in early 1992.

4. ***The Implicit Fee Construct Will Not Achieve Congressional Goals***

- The implicit fee construct has been widely criticized by video programmers as squelching, not encouraging, alternative cable programming services.
- The implicit fee concept was not identified by the Commission in its NPRM. It was proposed by TCI based on a study by Stanley Besen.
- Besen's study makes clear that implicit fees are based on the premise that operators pay to obtain programming, but home shopping programmers typically pay operators an explicit fee for carriage (usually 5% of net sales).
- Rate regulation is inappropriate where market rates are already available. Time-Warner agrees that the market rate for home shopping should be used to establish maximum leased access rates.
- The principal justification offered for implicit fees is they will protect against migration. But programmers will have no incentive to migrate if they are charged the market rate.
- Congress did not direct the Commission to establish maximum leased access rates to ensure that cable operators would recover the highest rate they could obtain for use of their channel capacity. Rather Congress intended leased access to serve as a "safety valve" to avoid anticompetitive practices.
- Implicit fees are also irrational. Adelphia's a la carte pricing system, which will charge subscribers prices ranging from \$.10 for shopping channels to \$1.05 for MTV, demonstrates that the implicit fee's averaging of the value of programming makes no sense, because COs value different types of programming differently. See N.Y. Times, Sept 20, 1993, at D3. And the cable operator is already recouping that value from subscriber payments.